UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
CONSOLIDATED INDUSTRIES CORP.	)	CASE NO. 98-40533
	)	
Debtor	)	

DECISION ON TRUSTEE'S MOTION TO COMPROMISE

At Fort Wayne, Indiana, on January 25, 2006.

Several years ago the court observed:

> There is just no good substitute for filing a proof of claim. By comparison to that clear and relatively simple demonstration that a pre-petition creditor should share in a distribution by the bankruptcy trustee, all arguments for some type of effective alternative finish, if at all, a distant second. In re Baldridge, 232 B.R. 394 (Bankr. N.D. Ind. 1999).

The present dispute gives the court the opportunity to again consider the possibility of an alternative to the claims process. The matter is before the court in connection with the trustee's motion to compromise what has been referred to as the "KB Litigation." The essence of the settlement as the court has now been asked to approve it[1] is that KB Homes will be given an allowed unsecured claim in the sum of $925,000.00 even though it has not filed a proof of claim. Enodis Corporation, the debtor's former parent, has objected to the motion for a number of reasons including the fact that KB Homes has never filed a proof of claim.[2] Whether the proposed compromise is approved is a matter

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[1]The scope of the relief the trustee originally sought when he first filed the motion was much broader than it is at the present time. As a result of earlier proceedings on the motion, the issues raised and the relief sought have been narrowed considerably so that they are now limited to allowing KB Homes a general unsecured claim notwithstanding the fact that it has not filed a proof of claim. Any other requests were voluntarily dismissed or withdrawn at a hearing held on August 15, 2005. See, Order Dated Aug. 23, 2005.

[2] Because of the change in the scope of the litigation, many of the arguments that Enodis originally advanced in opposition to the motion are no longer relevant.

committed to the court's discretion. Depoister v. Mary M. Holloway Foundation, 36 F.3d 582, 585-86 (7th Cir. 1994); Matter of Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992); In re American Reserve Corp., 841 F.2d 159, 162 (7th Cir. 1987).

The trustee not only opposes Enodis' objection, but also its right to even advance the objection in the first place, arguing that it does not have standing to participate in this case because its claim has been denied and, thus, it no longer qualifies as a creditor. The trustee is quite correct that Enodis' claim has been denied and the court has previously ruled that one of the consequences of that denial is to deprive Enodis of standing to participate in the administration of the bankruptcy estate. Yet, while Enodis' own claim against the estate has been denied, it asserts standing not just in its own right, but also as the assignee of a proof of claim filed by another creditor, Trane. That claim has not been objected to or challenged in any way, either before or after the assignment to Enodis, and as such it is deemed allowed. See, 11 U.S.C. § 502(a). Consequently, by virtue of the assignment from Trane, Enodis is once again the holder of an allowed claim against the bankruptcy estate, regardless of the fate that may have befallen its own claim. If the trustee wishes to object to Trane's claim now that it is in Enodis' hands, it is of course free to do so. Nonetheless, until that has been done, Enodis, as the holder of that claim, has the same right to participate in the administration of the bankruptcy estate as any other creditor.[3]

In a chapter 7 case such as this one, the rules of procedure are quite clear. "An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to

[3]Even if Enodis lacks standing to object to the compromise, the issue it presents – whether a creditor in a chapter 7 case can have an allowed claim without filing a proof of claim – is a straight forward legal proposition which the court could raise on its own initiative.

be allowed . . . ." Fed. R. Bankr. P. Rule 3002(a).[4] Indeed, the rules are so clear on this issue that the filing of a proof of claim is often called "a prerequisite to the allowance of a creditor's claim." See e.g., Matter of Evanston Motor Company, Inc., 735 F.2d 1029 (7th Cir. 1984) (discussing former bankruptcy rule 302(a)); Matter of Fernstrom Storage and Van Co., 938 F.2d 731, 733 (7th Cir. 1991); In re Francis, 15 B.R. 998, 1003 (Bankr. E.D. N.Y. 1981). Every time the Seventh Circuit has had the opportunity to validate some type of alternative to the filing of a proof of claim, it has refused to do so. See, Matter of DeVries Grain & Fertilizer, Inc. 12 F.3d 101, 104 (7th Cir. 1993) (pre-conversion request for an administrative expense does not satisfy the requirement); Matter of Greenig 152 F.3d 631, 635-36 (7th Cir. 1998) (the provisions of a confirmed plan are not a substitute for a proof of claim). See also, In re Johns-Manville Corp., 53 B.R. 346, 352-55 (Bankr. S.D.N.Y. 1985); In re Edghill, 113 B.R. 783, 784 (Bankr. S.D. Fla. 1990); Matter of Coastal Group, Inc., 100 B.R. 177 (Bankr. D. Del. 1989) (an adversary proceeding is not a substitute for filing a proof of claim).

In response to Enodis' argument that the court should not and cannot ignore the requirements of Rule 3002, the trustee seems to suggest that dispensing with a claim is not what the settlement contemplates and of course a proof of claim will be filed. See, Trustee's Brief in Opposition, pp. 12-13. Yet that is not the way the settlement agreement reads. It quite specifically states that "the entry of the bankruptcy court approval order shall automatically allow the KB unsecured claim

[4]Although the Rule lists four exceptions, none of them apply here. The exceptions contained in Rules 3003 and 3004 apply only in cases pending under chapter 9 or 11. The exception of Rule 3005 addresses the filing of claims by those who may be obligated along with the debtor to a particular creditor. Even then, it does not completely dispense with the need to file a claim, but only gives the co-obligor the opportunity to file one. The final exception, found at Rule 1019(3), addresses claims that were "actually filed" before a case was converted to chapter 7; it does not eliminate the need to file a proof of claim.

without any further need for filing a proof of claim with the Bankruptcy Court." Settlement Agreement, p. 7, ¶ 4.5, Exhibit A to Motion to Compromise (emphasis added). While the agreement, admittedly, goes on to give the trustee the discretion to ask KB to file a proof of claim, and, if it does not do so, gives him the ability to file the claim on its behalf, those provisions do not change the underlying reality that it is to be the court's order approving the compromise, and not any subsequent act by either the trustee or KB Homes, that is the vehicle by which it has an allowed claim. The argument also overlooks the fact that the time for a trustee to file a proof of claim on behalf of the creditor passed long ago, see, Fed. R. Bankr. P. Rule 3004, and although late claims filed by a creditor may have an opportunity to share in a distribution from the bankruptcy estate, late claims filed by others, including trustees, do not. In re Drew, 256 B.R. 804, 805 (10th Cir. BAP 2001). See also, In re Danielson, 981 F.2d 296, 298 (7th Cir. 1992).

The trustee's final argument is that KB Homes was not listed on the debtor's schedules and, as a result, was not sent notice of the claims bar date. From this the trustee argues that, because § 726(a)(2)(C) allows some late claims to share in a distribution as though they had been timely filed and § 726(a)(3) allows late claims to share in a distribution after all timely claims have been paid in full, it would improperly elevate form over substance to deny the motion simply because KB Homes has not yet filed a claim. While the court will acknowledge that there may be some equitable and pragmatic appeal to this argument, the Supreme Court and Seventh Circuit have made it clear that such considerations do not give the court the authority to circumvent the applicable rules of procedure. See, Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 1089 S.Ct. 963, 968-69 (1988); Matter of Greenig, 152 F.3d 631, 635 (7th Cir. 1998); In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993). Furthermore, the trustee's argument about the consequences of the failure to send a copy of the notice concerning the claims deadline to KB Homes subtly misstates the

provisions of § 726(a)(2)(C). A late claim will be allowed to participate in a distribution from the bankruptcy estate as though it were timely filed not because the creditor was not given notice of the bar date, but rather if the creditor "did not have notice or actual knowledge of the case in time" to file a timely claim. See, 11 U.S.C. § 726(a)(2)(C)(i) (emphasis added). Here, while the facts before the court reveal that KB Homes was not scheduled and the court did not send it a notice of the claims bar date, those facts say nothing about when KB obtained notice or actual knowledge of the case. We do know that it has known about this case for years, because it filed a motion for relief from stay on June 15, 2001.[5] While that date is after the expiration of the chapter 7 claims bar date, it is nonetheless clear that KB has known about this bankruptcy case for a substantial length of time, has not yet filed a proof of claim, and nothing before the court suggests when it first learned about the case. Nonetheless, unless and until KB Homes actually files a proof of claim there is no real need to consider when it obtained knowledge of this case and how that knowledge might affect its opportunity to share in a distribution from the bankruptcy estate.

Enodis' objection to the trustee's motion to compromise KB litigation will be sustained and that motion will be denied. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

[5]In that motion KB represented that it was willing to condition relief from the stay upon the same terms and conditions as set forth in an order the court had issued on August 14, 2000 granting relief from stay as to the Salah class action. That order provided, among other things, that "any judgment in favor of the Salah class action plaintiffs which is not covered by insurance shall have no effect on the determination of the amount of the Salah class action plaintiffs' allowed claim in this bankruptcy." Order Granting Motion to Lift Stay, pg. 2 (dated August 14, 2000). KB's motion also represented that it was not seeking to satisfy any judgment obtained from property of the estate. While neither of these limitations were reiterated in the proposed form of order which KB submitted in connection with its motion, and which the court signed, it is at least arguable that by apparently using its state court litigation, not only as an opportunity to finalize that litigation, but also, to establish a claim against the estate, KB may have exceeded the scope of its writ .